

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 28<sup>TH</sup> DAY OF SEPTEMBER 2022 / 6TH ASWINA, 1944

WA NO. 1356 OF 2022

JUDGMENT DATED 02.09.2022 IN WP(C) 25560/2022 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

SHEEBA GEORGE  
AGED 47 YEARS  
WIFE OF GEORGE, RESIDING AT THANDYEKUDY, VELIELCHAL,  
THATTEKKAD P.O., PIN- 686 681, KOTHAMANGALAM, ERNAKULAM  
DISTRICT (MEMBER, WARD NO. 6, KEERAMPARA GRAMA  
PANCHAYAT).

BY ADVS.

SRI. K.RAMAKUMAR (SR.)  
SRI. T.RAMPRASAD UNNI  
SRI. S.M.PRASANTH  
SRI. R.S.ASWINI SANKAR  
SRI. T.H.ARAVIND

RESPONDENT/S:

- 1 THE STATE ELECTION COMMISSION OF KERALA  
CORPORATION OFFICE COMPOUND, LMS JUNCTION,  
THIRUVANANTHAPURAM- 695 033, REPRESENTED BY ITS  
SECRETARY.
- 2 SRI. MAMACHAN JOSEPH,  
AGED 59 YEARS, SON OF JOSEPH, RESIDING AT  
ELICHIRAYILVEEDU, VELIELCHAL, KEERAMPARA P.O.,  
KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN - 686 681  
(MEMBER, WARD NO. 3, KEERAMPARAGRAMA PANCHAYAT).
- 3 THE KEERAMPARA GRAMA PANCHAYAT,  
KEERAMPARA P.O., KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN  
-686 681, REPRESENTED BY ITS SECRETARY.  
BY ADVS.  
R1 BY SHRI.DEEPULAL MOHAN, SC, STATE ELECTION  
COMMISSION  
R2 BY SRI. T.K.AJITHKUMAR (VALATH)  
R3 BY SRI. ALEXANDER JOSEPH  
SRI. C.DILIP  
SRI. R.PRADEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.09.2022, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**'CR'**

**S. MANIKUMAR, CJ & SHAJI P. CHALY, J.**

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W.A. No. 1356 of 2022  
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Dated this the 28<sup>th</sup> day of September, 2022.

**JUDGMENT**

SHAJI P. CHALY, J.

The captioned appeal is filed by the petitioner in W.P.(C) No. 25560 of 2022, challenging the judgment of the learned single Judge dated 02.09.2022, whereby the writ petition was dismissed confirming Exhibit P7 order dated 02.08.2022 passed by the Kerala State Election Commission, Thiruvananthapuram, against the appellant, in O.P. No. 5 of 2021, a petition filed by one Mamachan Joseph, an elected member of Ward No.3 of Keerampara Grama Panchayat; as per which the appellant is disqualified as a member of Ward No 6 of the Panchayat.

2. Brief material facts for the disposal of the appeal are as follows:

The appellant is a candidate elected from Ward No. 6 of Keerampara Grama Panchayat, Ernakulam District, in the elections held to the Local Self Government Institutions in December 2020 as an independent candidate defeating the candidates belonging to the Left Democratic Front and the United Democratic Front. In the

nomination paper submitted by the appellant, a specific declaration is made to the effect that she does not belong to any political party or in any coalition and also declared that she is an independent candidate contesting without any help from any of the political parties or coalition. Certified copy of the said nomination paper is produced as Exhibit P3 in the writ petition.

3. The appellant has also published an election notice dated 23.11.2020 requesting the electors to vote in her favour as an independent candidate and that she does not belong to any political party or any coalition, which is also produced along with the writ petition. The convener election committee of the appellant has printed and published colour posters, which were displayed in and around her ward as part of her election campaign and which is also produced along with the writ petition.

4. Therefore, the sum and substance of the contention advanced by the second respondent Sri. Mamachan Joseph before the State Election Commission is that the appellant contested and won the election from Ward No. 6 of the Keerampara Grama Panchayat as an independent candidate with the election symbol 'table fan'; however the sworn declaration dated 21.12.2020 in accordance with Rule 3(2) (c) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 ('Rules, 2000'

for short), was given, affirming that she is the official candidate of CPI (M) (LDF); instead of making a declaration as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999, ('Act 1999', for short), that she won the election as a candidate without any support of any political party or coalition. The certified copy of the self declaration form is also produced along with the writ petition.

5. It is further contended in the said petition that the Secretary of Keerampara Grama Panchayat prepared a register showing the affiliation of the members as required under Rule 3 (1) of the Rules 2000, wherein also, the appellant is registered as a member of CPI(M) (LDF), which is also produced along with the writ petition. It is made clear that the documents referred to above are all produced before the State Election Commission and marked in the said proceedings. Therefore, the sum and substance of the petition filed before the State Election Commission is that the action on the part of the appellant, who contested and won the election as an independent candidate, and thereafter joining a political party or coalition, shall acquire disqualification as per Section 3(1)(c) of the Act, 1999.

6. After considering the objections filed by the appellant and the evidence tendered by the parties, the State Election

Commission has found that, it is clearly proved that the appellant has contested the election as an independent candidate in Ward No. 6 of Keerampara Grama Panchayat, wherein both the UDF and the LDF had their own candidates to contest in the election; that the appellant had admitted that she contested and elected as an independent candidate without support of any political parties or coalition, which would abundantly clarify that the appellant contested and elected as an independent member not belonging to any coalition. But further, it was found that the appellant has indicated in the mandatory declaration filed under Rule 3 of the Rules, 2000 marked as Exhibit X1 that she has contested as an independent having the support of LDF.

7. That apart, from the register marked Exhibit X2 produced by the Secretary of the Grama Panchayat maintained in form No. 1 in accordance with Rule 3(1) of the Rules, 2000, the appellant is seen registered as a member of CPI(M) (LDF). It is also found by the State Election Commission that the appellant has affirmed that the Panchayat Secretary has recorded the facts in the register based on the declaration made by her in the form prescribed for the purpose.

8. It is also evident from the order of the Election Commission that the appellant admitted that in the election to the

post of Panchayat President, she voted in favour of LDF nominee and later the LDF members proposed and recommended the name of the appellant to the post of Vice President and emerged successful.

9. Taking into account the above vital aspects, it was held by the State Election Commission that the plea of mistake or error occurred in the declaration cannot be entertained as a valid and reasonable defence, since the appellant has not made any effort to rectify the error at the appropriate time. It was accordingly that the Original Petition was allowed and the appellant was declared as disqualified for being a member of the Keerampara Grama Panchayat as provided by Section 3(1)(a) of the Act, 1999, having defected in terms of the provisions of the Act 1999 and Rules 2000. Appellant is also declared as disqualified for contesting as a candidate in an election to any local authorities for a period of six years from the date of order i.e., 02.08.2022, as provided by Section 4(3) of the Act, 1999. It was thus, challenging the legality and correctness of the said order, the writ petition was filed.

10. The learned single Judge, after considering the rival submissions advanced by the parties, and taking into account the provisions of the Act, 1999 and the Rules, 2000, upheld the order passed by the State Election Commission after finding that it is in

accordance with law and therefore no interference is required. Being aggrieved, instant appeal is filed.

11. We have heard learned, Senior Counsel for the petitioner Sri. K.Ramkumar assisted by Adv. Sri. S.M. Prasanth, Sri. Deepu Lal Mohan, learned Standing Counsel for the State Election Commission, Sri. Alexander Joseph for the Keerampara Grama Panchayat and Sri. T.K. Ajith Kumar for the second respondent/petitioner in the Original Petition, and perused the pleadings and material on record.

12. The formidable contention advanced by the appellant is that there are no sufficient pleadings in the petition filed by the second respondent before the State Election Commission indicating any disqualification on the part of the appellant; that the only contention raised in the petition is that the appellant has joined the CPI(M); however, no materials have been produced before the Election Commission to show that the said political party has accepted her as a member; that the evidence of RW2 — Secretary of the Local Committee shows that the party has not accepted the appellant as a member; and that the learned single Judge failed to notice that 'joining a political party' is a question of fact and in an election matter leading to disqualification and disruption of representation of a ward in the Panchayat, strict pleadings and

proof are mandatory as has been declared in various judgments rendered by this Court interpreting the provisions of the Act, 1999.

13. It is also contended that the view taken by the learned single Judge on a mere intimation to the Secretary of the Panchayat after the election that it can be inferred that she joined a party is thoroughly erroneous and unsupportable in law; that the learned single Judge erred in holding that the judgment of the Apex Court in ***D. Sudhakar and others v. D.N. Jeevaraju and others*** [(2011) 6 SCC 381], is not applicable in the instant case; and that if the view taken by the learned single Judge, if upheld, will lead to very serious consequences to independent members elected and who vote on issues concerning their electorate with any political combination. On the basis of the above pleadings, the learned Senior Counsel for the appellant submitted that joining a political party is not a unilateral act, but can only be a bilateral one where one person joins and the other accepts.

14. It is further submitted that the pleadings and proof in an application for disqualification of an elected member shall strictly conform to the standards of an Election Petition under the Representation of Peoples Act, 1951. It is also submitted that a member joining a political party is to be positively proved by the petitioner who seeks disqualification, by making pleadings and

establishing the same by proof. That apart, it is contended that mere aligning with a political party will not amount to joining that party particularly by an independent member.

15. It is also submitted that a mere declaration made in form No.1 of Rule 3(1) of the Rules, 2000 cannot be treated as contrary to the nomination paper and amounting to joining the CPI(M) political party. It is further submitted that since the appellant has declared as an independent candidate in the nomination paper accepted under Rule 6 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995, and if there is any conflict with respect to the nomination paper and the declaration made, the declaration in the nomination paper is to be accepted and the appellant should have been treated as an independent candidate supported by CPI(M)/Left Democratic Front. Therefore, the sum and substance of the contention advanced is that the Election Commission has entered into the findings without any contrary and positive proof of the appellant joining the CPI(M).

16. It is also pointed out that the evidence tendered by the appellant and her witnesses were ignored by the State Election Commission. Therefore, it is submitted that the learned single Judge has failed to take note of such crucial legal aspects and accordingly, arrived at the incorrect observations, findings and the

ultimate conclusion. In that regard, the learned Senior Counsel has relied upon the judgments of the Apex Court in ***D. Sudhakar (supra), D. Sudhakar (2) and others v. D.N. Jeevara and others*** [(2012) 2 SCC 708, rendered by the Apex Court in the context of the election to the State Assemblies by interpreting paragraph 2(2) of the Tenth Schedule of the Constitution of India; the judgments of the Division Bench of this Court in ***Chinnamma Varghese v. State Election Commission of Kerala*** [2010 KHC 655 = 2010(3) KLT 426], ***Joseph K.M V. Babychan Mulangasseri and others*** [2015 (1) KHC 111=2015(1) KLT SN 29], and ***Abdul Haque v. Pathumma*** [2005(1) KLT 980]; and the judgments of the learned single Judges in ***Sheeba James v. George*** [2012(3) KLT 237], ***Anitha Baby v. Kunjappan Painkily and another*** [2015 KHC 33 =2015(1) KLT SN 133] and ***Sivadasan v. Kerala State Election Commission*** [2020 (6) KLT 484] rendered under the provisions of the Act, 1999 and the Rules, 2000.

17. On the other hand, the learned counsel for the State Election Commission as well as the learned counsel for the second respondent/petitioner in the Original Petition before the Commission, advanced arguments supporting the findings rendered by the State Election Commission and the learned single Judge.

18. The learned Standing Counsel for the State Election

Commission has also relied upon a judgment of the three Judges' Bench of the Apex Court in ***Jagjit Singh v. State of Haryana, (2006) 11 SCC 1.***

19. The learned counsel for the Grama Panchayat submitted that the appellant has made the declaration in terms of Rule 3(2)(c) of the Rules, 2000; and that, as she has been elected as an independent member not belonging to any coalition, she has an option to make a declaration of her choice, which is well reflected in Rule 3(c) of the Rules, 2000 due to the employment of the expression 'to that effect', before the officer authorised under sub-Rule (1) of Rule 3, and accordingly, irrespective of the declaration made, that member can only be treated as an independent member.

20. We have evaluated the rival submissions made across the Bar. Insofar as the judgment of the Apex Court in ***D. Sudhakar*** and ***D. Sudhakar (2)*** (supra) is concerned, the same were rendered by the Apex Court in the context of paragraph 2(2) of the Tenth Schedule of the Constitution of India.

21. Tenth Schedule of the Constitution of India deals with the provisions as to disqualification on ground of defection, and it applies to either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

legislature party” is defined to mean, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4, the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions; and original political party”, in relation to a member of a House, means the political party to which he belongs for the purposes of subparagraph (1) of paragraph 2;

22. Paragraph 2 deals with disqualification on the ground of defection and it reads thus:

**“2. Disqualification on ground of defection.—(1)** Subject to the provisions of [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political

party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph,—  
(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188...”

23. Paragraph 2(2) specifies that an elected member of a House, who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House, if he joins any political party after such election. Therefore, the issue with respect to defection to the bodies specified therein absolutely centered around paragraph 2 of the Tenth Schedule. True, there was no proof therein to establish that the independent member joined a political party and contested the election. But, here, the case is entirely different due to the declaration made by the appellant quite contrary to the mandatory requirement of the Rules 2000, and thus, that by itself can turn out

to be a relevant piece of evidence leading to the ultimate proof when considered along with other documentary and oral evidence. Therefore, it can be seen that, it was taking into consideration the evidence and proof and the modalities prescribed in the Tenth Schedule of the Constitution that the Apex Court has rendered the judgments in **D. Sudhakar and D. Sudhakar (2)** cited supra, in respect of joining a party; which is well reflected in paragraphs 57 to 59 of **D. Sudhakar (2)** and they reads thus:

57. After having been sworn in as Ministers in the Government led by Shri Yeddyurappa, the appellants undisputedly attended meetings of the BJP Legislature Party and had also participated in rallies and public meetings which had been conducted by the said party. The Speaker, as well as the Full Bench of the High Court, came to the conclusion that by offering letters of support to Shri Yeddyurappa and joining his Council of Ministers, the appellants had shed their independent status and had joined the Bharatiya Janata Party, and the same was subsequently corroborated by their further action in attending the meetings of the BJP Legislature Party and participating in its programmes. Both the Speaker and the High Court, therefore, held that the appellants had become disqualified from the membership of the House under Para 2(2) of the Tenth Schedule of the Constitution.

58. In the absence of any written and/or documentary proof of the appellants having joined the Bharatiya Janata Party, both the Speaker and the High Court relied on the

decision of this Court in *Ravi S. Naik case* [1994 Supp (2) SCC 641], which was subsequently followed in *Mahachandra Prasad Singh case* [(2004) 8 SCC 747] and *Jagjit Singh case* [(2006) 11 SCC 1] , in which it was held that in order to incur disqualification under Para 2(2) of the Tenth Schedule to the Constitution it was not always necessary that a written communication would have to be made to the political party in that regard. As far as issuance of whip by the Chief Whip of the Bharatiya Janata Party is concerned, such an act would not ipso facto be taken as conclusive proof that the appellants had joined Bharatiya Janata Party. Furthermore, in the face of denial by the appellants of having been served with the whip, there is nothing on record to prove that they were actually received by the appellants.

59. The decisions referred to hereinabove have settled certain principles of law relating to interpretation of the provisions of the Tenth Schedule to the Constitution, but the said principles have to be applied in each case in its own set of facts.”

24. Insofar as the judgments rendered by this Court in the context of the Act, 1999 and the Rules, 2000 are concerned, they are all rendered on the basis of defection made by the members of the local bodies violating the whip issued by the respective political parties to its members or members of a coalition in contemplation of the provisions of Section 3(1) (a) of Act, 1999, or under entirely different fact situations, and therefore the nature of evidence both

oral and documentary available for consideration were also different.

25. It is true, in the judgment in **Abdul Haque** (supra), a Division Bench of this Court had considered the question as to whether a mere support of a political party in favour of an independent candidate can be said to be a defection; and it was held that it is not so because, in that case, on evidence, it was found that the independent member did not make any declaration, contrary to the provisions of the Rules 2000, as in the instant case. Relying upon the judgments of the Apex Court in **D. Sudhakar and D. Sudhakar (2)**, and the judgments of this Court cited supra, learned Senior Counsel submitted that the Election Commission has inferred the circumstances of defection on the basis of the register maintained by the Secretary of the Grama Panchayat as per Rule 3(1) in Form No.1 and the declaration made by the appellant as per sub-Rule 3(2) in form 2, and therefore, the order passed by the Election Commission is arbitrary and illegal, since there was no proof before the Election Commission to disqualify the appellant. We have no doubt in our mind that there should be relevant pleadings and proof to satisfy the specification contained under the laws discussed above. But, the question is, can it be a static principle based on a case law alone or it differs from case to case. In our

view, the pleadings and proof depends on the facts, law and circumstances of each case; and in the case at hand, it has got its own peculiar features and characteristics to reach the ultimate conclusion in terms of the Act, 1999 and Rules, 2000.

26. In that context, the learned counsel for the State Election Commission has invited our attention to the judgment of a Three Judges' Bench of the Apex Court in **Jagit Singh** (supra) and specifically to paragraphs 50 to 52 and they read thus:

**50.** It was also contended that para 2(2) of the Tenth Schedule deserves to be strictly construed. The submission is that the word “join” in para 2(2) deserves a strict interpretation in view of serious consequences of disqualification flowing therefrom on an order that may be made by the Speaker. Para 2(2) of the Tenth Schedule reads as under:

“2. (2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.”

**51.** As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a Member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a Member, without a Member formally joining a political party inasmuch as not filling form required to be filled by a member of the political party under the rules and regulations of

that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent Member has joined a political party. These are two extreme views on the issue.

52. We are of the view that to determine whether an independent Member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a Member joining a political party. At the same time, non-fulfilment of formalities with a view to defeat the intent of para 2(2) is also of no consequence. The question of fact that a Member has given up his independent character and joined, for all intent and purposes, a political party though not formally so as to incur disqualification provided in para 2(2) is to be determined on appreciation of the material on record.”

27. Therefore, on an analysis of the judgment in **Jagjit Singh**, it is clear that interpreting paragraph 2(2) of the Tenth Schedule of the Constitution of India, it was held that the factum of joining can be inferred from facts and conduct of a Member, without a Member formally joining a political party inasmuch as not filling form required to be filled by a member of the political party under the Rules and Regulations of that party or payment of any prescribed fee. However, relying upon paragraph 52 in **Jagjit Singh**, the learned Senior Counsel submitted that the Apex Court

had occasion to consider the issue as to whether an independent member has given up his independent character of which he was elected by the electorate and a mere expression of outside support would not lead to an implication of a member joining a political party.

28. However, in our considered opinion, a reference to the relevant provisions of the Act, 1999 and the Rules, 2000 would make the situation more clear so as to arrive at a logical conclusion in the matter, and with respect to the implication of the proposition of law laid down by the Apex Court in the afore cited judgments.

29. Section 3(1) of the Act, 1999 specifies that, the application of the provisions of the Act is notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 ('Act, 1994' for short) or in the Kerala Municipality Act, 1994 or in any other law for the time being in force and subject to the other provisions of the Act, 1999.

30. On a reading of the said provision itself, it is clear that it is a special statute governing elections to the self Government Institutions. Clauses (a) to (c) of Section 3(1) of Act, 1999 is relevant to the context and they reads thus:

### 3. Disqualification on ground of Defection.-

...

(a) if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of a Standing Committee or the Chairman of a Standing Committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in an voting on a no-confidence motion against any one of them except a member of a Standing Committee;

(b)" 1f an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or 1f such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in this behalf in the manner prescribed, votes or abstains from Voting,-

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or

(iii) 'in a meeting of a Panchayat in an election of its President, Vice-President, a member of a Standing Committee or the Chairman of the Standing Committee; or in an voting on a no-confidence motion against any one of them except- a member of a Standing Committee;

(c) if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority.”

31. In our considered opinion, going by clause (a) quoted above, it is clear that it absolutely deals with voluntarily giving up of membership by a member contrary to any direction in writing issued by a political party to which he belongs or by a person or authority authorised by it in that behalf in the manner prescribed, votes or abstains from voting in a meeting of a Municipality or Panchayat in regard to the election to various posts of the local bodies. That has nothing to do with the case at hand.

32. Clause (b) of Section 3(1) deal with a situation where; if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in that behalf in the manner prescribed, votes or abstains from voting in a meeting of a Municipality or Panchayat for various posts. Admittedly, that situation has also not arisen in this case, the appellant being a pure independent member elected without any support of a political party or coalition. Be that as it may, clause (c) of Section 3(1) is the relevant provision that applies to the case at hand, which specifies that if an independent member not belonging to any coalition, joins

any political party or coalition; he shall be disqualified for being a member of that local authority.

33. The implication of Section 3(1)(c) of the Act, 1999 would be more clear, if Rule 3 of Rules, 2000 dealing with the maintenance of registers to record the party connections of members, is referred to, and it reads thus:

:3- To maintain register to record the party connections of members.— (1)The Officer authorised for the purpose by the State Election Commission shall record in the Register in Form 1 appended to these rules, the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition.

(2) if a member elected to a local authority is,-

(a) a person who contested election as a candidate of a Political party or as a candidate having the support of political party shall file a declaration to that effect before the Officer authorised under sub-rule (1) and accordingly that member shall be treated as a member of that political party or as a member with the support of that political party, as the case may be;

(b) an independent who contested election as a candidate of a coalition or as a candidate with the support of the coalition, shall file a declaration to that effect before the Officer authorised under sub- rule (1) and accordingly that member shall be treated as a member of that

coalition or as a member with the support of that coalition; as the case may be;

(c) an independent who contested election otherwise than as the candidate of a political party or a coalition or as the candidate with the support of the same shall file a declaration to that effect before the Officer authorised under sub-rule (1) and accordingly that member shall be treated as an independent member and;

a register under sub-rule (I) shall be maintained recording therein the respective facts.

(3) The declaration of the member under sub-rule (2) shall be in Form 2 appended to these rules and shall be filed on the same day he assumes Office as member after the swearing:

Provided that a person who has been a member of a Local Authority on the date of publication of these rules in the Gazette shall, in accordance with the position as on the date on which he was elected a member, file, before the expiry of the date fixed by order by the State Election Commission, the declaration under sub-rule (2) and the details in respect of the member shall be recorded in the register accordingly.

Explanation:— Declaration shall be filed under these rules even if a member has filed declaration under rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 1998 and the details in respect of the member have been recorded in the register maintained under the said rules.

(4) The register maintained under sub-rule (1) and the declarations that the members submit for making entries therein shall be kept

in .the safe custody of the Officer authorised under sub-rule (1) at his own responsibility.”

34. Clauses (a), (b) and (c) of Sub-Rule 2 specifies the manner in which the candidates of a political party, independent candidate who contested election as a candidate of a coalition, or with the support of the coalition, and an independent candidate who contested the election otherwise than as the candidate of a political party or coalition or as as the candidate with the support of the same shall be dealt with in the matter of filing declaration. Therefore, a candidate belonging to a political party or a candidate having the support of a political party, an independent candidate who contested election as a candidate or a coalition or as a candidate with the support of the coalition, or an independent candidate who contested election otherwise than as the candidate of a political party or coalition, in accordance with their candidature, necessarily have to file a declaration in accordance with the Rules after being elected as a member.

35. Therefore, when the appellant admitted before the State Election Commission, and the records in terms of the provisions of the Rules are marked by the Election Commission by summoning the same from the Secretary of the Grama Panchayat and finding that the appellant contested as an independent candidate otherwise than as the candidate of political party or a coalition or as the

candidate with the support of the same instead of filing a declaration to that effect, filed a declaration that she has contested as an independent candidate of CPI(M), LDF with the symbol of 'table fan', is absolutely against the mandatory requirement contained under Rule 3 (2)(c), and therefore, the disqualification contained under Section 3(1)(c) of the Act, 1999 is attracted.

36. Moreover, the register to be maintained by the officer authorised for the purpose by the State Election Commission in form 1 appended to the Rules, 2000 was summoned and marked as Exhibit X1, wherein also, the appellant is registered to be a candidate who won the election with the support of the CIP(M), LDF. These were the factors that weighed with the State Election Commission while deciding the petition. Above all, sub-Rule 3 of Rule 5 of the Rules, 2000 dealing with the decision of the Election Commission regarding disqualification, is relevant to the context.

37. Sub-Rule (3) thereto specifies that for the purpose of disposing a petition under sub-Rule (1), the State Election Commission may, if it deems necessary, examine the veracity of the declaration filed by the member concerned under sub-Rule 2 of Rule 3 or may also examine as to whether the member belongs to a political party or to a coalition or as an independent member not included in a political party or a coalition, and the decision that the

coalition may take on the basis of such examination in the matter shall be final. It is clear from the material available on record that, it is not a case of mere support to the appellant from outside, in the contest of the election to the post of Vice President, but it is done after joining a political party in the context of the laws discussed above.

38. Therefore, on a reading of the provisions of the Act, 1999 and the Rules, 2000, it can be seen that there is a clear modality prescribed for dealing with a petition filed before the State Election Commission in the matter of defection in terms of the provisions of the Act, 1999 and the Rules, 2000.

39. In our considered opinion, there was adequate documentary proof before the State Election Commission, which had made the findings on the basis of the documentary proof, as well as the inferences made on the basis of the documents so produced and proved, and in accordance with the sub- Rule 3 of Rule 5, as above. Therefore the contention advanced by the learned Senior Counsel for the appellant that there is no proof for joining a political party, cannot be sustained in law at all.

40. In that view of the matter, when a declaration was made by the appellant, an independent candidate who won the election without support of a coalition or of a political party, as if to appear

that she has contested as an independent member with the support of a political party/coalition, and the Secretary of the Grama Panchayat registered so in the statutory register; it is clear that the petitioner has violated the requirements of law; which is a clear proof to show that the appellant has joined the CPI(M)/LDF coalition in terms of the provisions of the Act and the Rules, and contested and won the election to the post of Vice President as a candidate fielded by the said political party/ coalition.

41. It is also equally important to note that an affidavit is filed by the Secretary of the Grama Panchayat in the writ appeal stating that as per Section 48A of the Kerala Panchayat Raj Act, 1994, the Returning Officer, Presiding Officer etc. be deemed to be on deputation to the State Election Commission and therefore, as per Rule 3(1) of the Rules, 2000, Secretary is the authorised officer for the purpose of the State Election Commission, to record in the Register in Form 1 the details as to whether a member duly elected to a local authority belongs to a political party or coalition or having the support of any one of them and an independent member not belonging to any political party or coalition.

42. However, in our considered opinion, as we have pointed out above, Section 3(1) of the Act, 1999 makes it clear that in order to deal with the situations propounded in the Act, 1999, Act, 1994

is completely excluded and therefore, the officer authorised for the purpose by the Election Commission in terms of Rule 3(1) is the officer to maintain the register in form 1 of Rule 3(1). Since such an affidavit is filed, the learned Standing Counsel for the State Election Commission has produced a circular dated 12.12.2020, apparently issued for conducting election to the Local Self Government Institutions, which clearly specifies that the Secretaries of the Local Self Government Institutions shall maintain a register in form 1 as per Rule 3(1) of the Rules, 2000. Moreover, there is no force in the contention of the counsel for the Panchayat placing reliance on the phraseology "to that effect" contained in Rule 3 (2) (c) of Rules to gather a different meaning than the meaning that, a declaration as a pure independent candidate.

43. Therefore, the submission made by the Secretary of the Grama Panchayat that he was deemed to be an officer by virtue of Section 48A of the Act, 1994, cannot be sustained under law. Probably realising that a false affidavit is filed, the Secretary of the Grama Panchayat has addressed the State Election Commission as well as the learned Standing Counsel for the Panchayat Adv. Sri Alexander Joseph, as per communications dated 22.09.2022, that a mistake is committed in filing the affidavit, in view of the circular issued by the State Election Commission directing the Secretaries

and the local bodies to exercise the powers conferred under Rule 3(1) of the Rules, 2000. Those documents are also produced before us by the learned Standing Counsel for the Election Commission.

44. Therefore, the totality of the circumstances emerging from the facts and law discussed, would undoubtedly demonstrate that the entire set of documents in contemplation of the provisions of the Act, 1999 and the Rules, 2000 relied upon by the State Election Commission as a proof; and the inferences drawn therefrom and Rule 5(3) of the Rules, 2000, are in accordance with law.

45. Above all, in our considered opinion, insofar as the law relating to defection in regard to the elected members of the local body is concerned, it is made with the intention of upholding the constitutional principles, the democratic set up and the rule of law prevailing in the country. This we say because, in order to sustain the faith of the citizens in the democratic set up of conducting elections, and for retaining and sustaining the confidence of the citizens on the candidates elected by the electorate, a strict view is to be adopted in the matter of defection. It is with the said basic intention that the Act, 1999 and Rules, 2000 were brought into force. This aspect was considered by the Apex Court not only in **Jagjit Singh** (supra), but also in the judgment rendered in

***Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, (2020) 2 SCC 595.*** In the context of Tenth Schedule of the Constitution of India, it was held in ***Shrimanth Balasaheb Patil*** (supra) that “*The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an Anti-Defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.*”

46. Accordingly, it is held therein that the Tenth Schedule was brought in to cure the evil of defection recognising the significant impact it has on the health of our democracy, and that the 91<sup>st</sup> Constitutional Amendment also strengthens the aforesaid view that the law needed further strengthening in order to curb the evil of defection. In our view the said proposition would equally, or with more force apply to the laws relating to the defection in the local bodies.

47. So also in ***Jagjit Singh*** (supra), it is held as follows:

“28. We have no difficulty in accepting the contention that there is a fundamental difference between an independent elected Member and the one who contests and wins on ticket given by a

political party. This difference is recognised by various provisions of the Tenth Schedule. An independent elected Member of a House incurs disqualification when he joins any political party after election as provided in para 2(2) of the Tenth Schedule. There is also no difficulty in accepting the proposition that giving of outside support by an independent elected Member is not the same thing as joining any political party after election. To find out whether an independent Member has extended only outside support or, in fact, has joined a political party, materials available and also the conduct of the Member is to be examined by the Speaker. It may be possible in a given situation for a Speaker to draw an inference that an independent Member of the Assembly has joined a political party. No hard-and-fast rule can be laid down when the answer is dependent on the facts of each case.

29. It is also essential to bear in mind the objects for enacting the defection law also, namely, to curb the menace of defection. Despite defection a Member cannot be permitted to get away with it without facing the consequences of such defection only because of mere technicalities. The substance and spirit of law is the guiding factor to decide whether an elected independent Member has joined or not a political party after his election. It would not be a valid plea for a person who may have otherwise joined a political party to contend that he has not filled up the requisite membership form necessary to join a political party or has not paid requisite fee for such membership. The completion of such formalities would be inconsequential if facts otherwise show that the independent Member has joined a political party. The facts of the four cases of independent elected Members are required to be examined in the light of these principles.”

48. It was also held therein that, the word “join” in para 2 (2) of the Tenth Schedule deserves a strict interpretation, in view of serious consequences of disqualification flowing therefrom on an order that may be made by the speaker.

49. Upshot of the deliberation is that, we are of the clear and definite opinion that the learned single Judge was right in dismissing the writ petition; and the appellant has not made out any case of jurisdictional error or other legal infirmities, justifying our interference in an intra court appeal filed under the provisions of the Kerala High Court Act, 1958.

Needless to say, the writ appeal fails and accordingly it is dismissed. It is also placed on record that I.A. 1 of 2022, filed by the local Secretary of CPI(M) to get himself impleaded as additional respondent is dismissed by a separate order.

sd/-  
**S. MANIKUMAR,**  
**CHIEF JUSTICE.**

sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

Rv